

Murray, Bill (II)

OCCUPATIONAL DISEASE (RCW 51.08.140)

Psychiatric conditions (mental/mental)

A worker's acute reaction to job stress, even though greater than might be expected for most individuals, constitutes an occupational disease where the increased stress and tension present in the working climate were objectively verifiable and greater than the day-to-day mental stress common to all occupations and to non-employment life. [Post-*Kinville* (35 Wn. App. 80).]*In re Bill Murray (II)*, BIIA Dec., 57,009 (1984) [special concurrence and dissent]

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**BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON**

IN RE: BILL E. MURRAY) **DOCKET NO. 57,009**
)
CLAIM NO. H-502652) **DECISION AND ORDER**

APPEARANCES:

Claimant, Bill E. Murray, by
Landerholm, Memovich, Lansverk, Whitesides, Wilkinson, Klossner & Perry, per
Marla Ludolph

Employer, Clark County, P.U.D., by
Blair, Schaefer, Hutchison, Wynne, Potter & Horton, per
John R. Potter and Wayne Nelson

Department of Labor and Industries, by
The Attorney General, per
John R. Dick and S. Frederick Feller, Assistants

This is an appeal filed by the claimant on June 10, 1980 from an order of the Department of Labor and Industries dated May 23, 1980, which adhered to an order dated May 16, 1979, which rejected the claim "for benefits for injury, accident or occupational disease because the condition is not the result of an industrial injury as defined by the Workers' Compensation Act". **REVERSED AND REMANDED.**

DECISION

This matter comes before the Board pursuant to an order of the Clark County Superior Court dated August 24, 1984. That order, received by this Board on August 30, 1984, directed the Board to further consider its Decision and Order of November 30, 1981 in this matter "based on the Department of Labor and Industries v. Kinville, 35 Wn. App. 80 (1983)". The court's order further directed:

- a. This consideration shall be based on the record already established; no further testimony shall be allowed to be taken.
- b. The Board shall have ninety (90) days from the receipt of this order to make consideration and issue a Decision and Order.

In the decision of November 30, 1981, this Board placed heavy reliance on the law recited in Simpson Logging Company v. Department of Labor and Industries, 32 Wn. 2d 472 (1949). We characterized that case as setting forth the controlling principle of law regarding compensability of a disease as an occupational disease under Title 51 RCW. We attempted to distinguish the

1 reasoning of a subsequent case, Favor v. Department of Labor and Industries, 53 Wn. 2d 698
2 (1959), as controlling even though it dealt with the effect of "the emotional stress and strain of
3 anxiety and worry" in relation to a worker's employment.
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5 Subsequent to our November 30, 1981 Decision and Order in the instant case, this state's
6 Court of Appeals, Division II, issued its opinion in Kinville, supra. In that opinion the court
7 concentrated on the definition of occupational disease, as set forth in RCW 51.08.140. Particularly,
8 it focused on the phrase, "naturally and proximately" in an effort to ascribe meaning to its totality
9 which, the court felt, prior case law had failed to do.
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11 Prefacing its reasoning, the Kinville court acknowledged the holdings in Simpson and Favor.
12 It declared its inability to reconcile the reasoning contained in the two cases. It further expressed its
13 belief that the Supreme Court in Favor had sub silentio overruled Simpson insofar as the latter had
14 rejected the "peculiar to the occupation" test of compensability for occupational disease. The court
15 stated the "naturally" requirement in the definition of occupational disease, must be interpreted as
16 referring to "something more" than mere proximate or legal causation. The court further stated that
17 a disease can be found to arise "naturally and proximately" out of a claimant's employment only
18 when the causative elements are found to be inherent in the claimant's particular occupation. In
19 adopting this construction of the natural and proximate elements of RCW 51.08.140, the court held
20 that the worker has the burden of establishing that the conditions producing his disease are peculiar
21 to, or inherent in, his particular occupation.
22

23 Since that decision has come down, this Board has faithfully attempted to apply the Kinville
24 test to the circumstances presented in appeals before us. Such applications have resulted in a
25 number of claims being held non-compensable which would have received a different holding under
26 the Simpson cause-in-fact analysis.
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28 By its order dated August 24, 1984, the Superior Court now directs this Board to evaluate the
29 evidence once again against the standard of proof required in Kinville. The strict holding in that
30 decision is stated in its penultimate paragraph:
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32 "...Her disease can be held to have arisen naturally out of her
33 employment only if her job environment exposed her to a greater risk of
34 developing the mental condition than employment generally or non-
35 employment life. Satisfaction of this standard requires a showing by the
36 claimant that her employment involved greater stress and tension than
37 the day-to-day mental stress common to all occupations..."
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1 The same burden now applies to Mr. Murray. We still have absolutely no difficulty instating at the
2 outset that the "proximate" element of the statutory definition is satisfied. In response to questions
3 directed toward determining cause in fact, Dr. Robert Blomquist, an internist, responded that:
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5 "A ...the stress, the feelings of his stress of the job at that point in time were
6 such that it provoked a state of anxiety and depression such that he
7 wasn't able to keep up with continued working without some help.
8

9 Q Again, doctor, could you express that opinion in terms of reasonable
10 medical probability as to the relationship between what you understood
11 about Mr. Murray's reaction to his job situation and the condition you
12 diagnosed?
13

14 A I think there is reasonable probability that the stress of the job did
15 provoke the response of the patient in terms of the anxiety and
16 depression."
17

18 The nature of Mr. Murray's illness was one of both physical and emotional manifestations. He was
19 suffering interference with his sleep and was subject to episodes of nausea, vomiting, and diarrhea.
20 The development of these manifestations coincided with a change in working conditions which Mr.
21 Murray described in some detail.
22

23 His position at the time of symptom onset was that of a dispatcher working the swing shift for
24 the Clark County P.U.D. In early 1978, the P.U.D. moved its headquarters. He described the
25 change of physical surroundings for his own job which occurred with the change in relocation of the
26 headquarters:
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29 "We moved into the new building in January of '78. In there you're
30 confined, there is no windows or anything to look out. You're just like
31 being locked up in a jail."
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34 Mr. Murray also described the nature of increased job stress which was attendant at the time of
35 headquarters relocation affecting the total working environment:
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37 "...it was in the middle of the building boom and we had six or seven of
38 our underground crews working plus three contracting crews working
39 plus our crews on the underground was working every Saturday. The
40 underground was being put in faster than we could get it on our maps
41 and when we did have trouble under the underground and call a man
42 out at night we would try to go by our maps and they wouldn't even jibe
43 with what was in the field. It got so that some of the servicemen was a
44 little lerry on switching and I was a little leery on switching because I
45 didn't have it in front of me and I figure there (sic) are eyes out there and
46 I was afraid that I was going to hurt somebody, plus the fact that we
47

1 have quite a few people that had turned off for non-payment of lights,
2 they didn't pay their bill.

3
4 The swing shift is busiest, busiest shift of the whole work. You're by
5 yourself from 3:30 to 11:30. When you have an outage -- I think at that
6 time we had three or four lines in there and if you had a pretty good-
7 sized outage you was busy plus getting the calls from the people that
8 came home and found their lights being turned off. You was called
9 everything under the sun, you was threatened, sometimes I did call an
10 extra dispatcher in to help me if it was real big.

11 . . .

12 The dispatcher's office worked for a long time shorthanded where some
13 of the other departments grew. When I became sick and we hired two
14 extra men in the dispatcher's office, so we do have more help in the
15 dispatcher's office now than we did before."

16
17 Thus, Mr. Murray felt under a much greater amount of stress during this time than he had
18 previously. His reaction to the stress was subjective, of course, but there were objective indices to
19 substantiate a real change in working environment. His new assigned confines were like a "jail";
20 there were no windows; there were greatly increased security precautions -- monitors which were to
21 be watched; "buzzers" would ring when people entered the secured facilities; "beepers" went off for
22 people entering and leaving the compound. These added elements would often interrupt customer
23 calls, placing the solitary dispatchers serving the swing shift under greater stress. In short, the
24 working climate in the new facility was austere and threatening.

25
26 Superimposed on this more stressful austere environment was a very real concern about the
27 accuracy of electrical schematic configurations upon which he as dispatcher had to rely in advising
28 persons in the field responsible for repairing outages. Apparently, these schematics or "maps"
29 were not updated with sufficient frequency during the "building boom" occurring in the P.U.D's
30 service area. Mr. Murray feared that the true field arrangement would not be reflected in the
31 schematics he had to rely upon in giving switching directions. He was genuinely concerned that
32 one of his directions based on inaccurate data might cause severe injury or death to a repair
33 person. On top of this was a climate of a great number of power outages and customers whose
34 electricity had been terminated for non-payment which precipitated numerous phone call complaints
35 and threats to him personally from outraged power users.

36
37 Viewing these facts, we have no reluctance to find that the stress and tension present in
38 such a working climate was greater than the day-to-day mental stress common to all occupations
39 and non-employment life. Mr. Murray's acute reaction to these stresses may have been greater
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1 than might be expected for most individuals, but his proclivity for the development of such a
2 reaction does not mitigate against compensability of his diagnosed condition under this state's
3 Industrial Insurance Act.
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5 Had this case been one of a heart attack precipitated by emotional stress, this Board majority
6 would have no difficulty in finding it to meet the parameters of unusual stress required of such
7 cases. See Windust v. Department of Labor and Industries, 52 Wn. 2d 33 (1958) and Sutherland v.
8 Department of Labor and Industries, 41 Wn. App. 333 (1971). We find no greater test to be applied
9 under the Kinville doctrine to questions of occupational disease precipitated by unusual emotional
10 stress and tension.
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15 **FINDINGS OF FACT**

- 16 1. On May 3, 1979, Bill E. Murray filed an accident report alleging that he
17 had suffered an industrial injury or occupational disease, as a result of
18 conditions occurring during the course of his employment as a service
19 dispatcher with the Clark county P.U.D. on and preceding April 28,
20 1979. On May 16, 1979 the Department issued an order rejecting the
21 claim for benefits for the reason that the claimant's condition was not the
22 result of an industrial injury as defined by the Workers' Compensation
23 Act. On May 22, 1979, the claimant filed a protest and request for
24 reconsideration, and On July 5, 1979 the Department issued an order
25 holding its order of May 16, 1979 in abeyance. On May 23, 1980, the
26 Department issued an order adhering to its order of May 16, 1979
27 rejecting the claim. On June 10, 1980, claimant filed a notice of appeal
28 from the Department's order of May 23, 1980. On June 26, 1980, the
29 Board issued an order granting the appeal and hearings were held
30 thereafter.
31
- 32 2. The claimant, Bill E. Murray, was first employed by the Clark County
33 P.U.D. as a journeyman lineman in 1949. He has been continuously
34 employed with the P.U.D. since February 1969. He began training as a
35 dispatcher in 1973 and was working as a full-time service dispatcher on
36 the swing shift between January 1978 and April 28, 1979.
- 37 3. During the period January 1978 through April 28, 1979, Mr. Murray's
38 work as a service dispatcher for the P.U.D. required him to deal with
39 complaints from customers whose electrical service had been
40 discontinued as well as complaints of consumers suffering from power
41 outages. The physical environment in the area in which the dispatcher
42 had to work changed after the P.U.D. relocated its headquarters in
43 January 1978 to one of being significantly more stark and austere than
44 the location of his prior headquarters.
- 45 4. During this period, the dispatcher unit was shorthanded and information
46 upon which they had to rely to assist field personnel in making repairs
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1 for power outages was not fully accurate resulting in a real concern over
2 the reliability of switching directions communicated from the dispatchers
3 to repair persons.

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5 5. The conditions of the physical facility of the claimant's working
6 environment, together with the high level of stress created by irate
7 electric power consumers and unreliable data upon which dispatchers
8 had to rely for giving directions, created a climate of greater stress and
9 tension than generally found in other employment or non-employment
10 life.
11 6. On or about April 28, 1979 the claimant suffered from a condition
12 diagnosed as acute situational reaction with anxiety and depression
13 which was a natural proximate result of stress related to the working
14 climate of his job situation as dispatcher for Clark County P.U.D.

15 **CONCLUSIONS OF LAW**

- 16
17 1. The Board of Industrial Insurance Appeals has jurisdiction of the parties
18 and subject matter of this appeal.
19 2. On or about April 28, 1979, claimant exhibited a condition compensable
20 as an occupational disease under the Workers' Compensation Act of
21 this state.
22 3. The order of the Department of Labor and Industries dated May 23,
23 1980 which rejected the claimant's application for benefits, is incorrect,
24 should be reversed, and this claim remanded to the Department with
25 direction to allow the claim for acute situational reaction with anxiety and
26 depression as an occupational disease, and to take such further action
27 as may be authorized or indicated by law.
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29 It is so ORDERED.

30 Dated this 27th day of November, 1984.

31
32 BOARD OF INDUSTRIAL INSURANCE APPEALS

33
34 /s/
35 MICHAEL L. HALL Chairman

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37 /s/
38 FRANK E. FENNERTY, JR. Member

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40 **SPECIAL CONCURRING STATEMENT**

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42 I have signed the foregoing majority decision, because I concur with the Chairman that, even
43 in light of the Kinville decision, this claim is allowable as a compensable mental occupational
44 disease.
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1 In particular, I concur with and adopt the formal Findings of fact, Conclusions of law, and
2 Order, showing that this case meets the "greater stress and tension" test of Kinville, which also was
3 an alleged mental occupational illness case.
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5 However, I would go further in the discussion in the "Decision" portion, to clearly reflect my
6 view that the Kinville decision only applies to alleged mental occupational diseases, and does not,
7 and should not, apply to any other occupational disease claims. Accordingly, I would add, on page
8 2, line 9, after the word "disease," the phrase "as it relates to mental occupational disease,"; I would
9 add, on page 2, line 20, after the word "disease," the phrase "as it relates to mental occupational
10 disease,"; and I would add, on page 2, line 27, after the word "his" the word "mental".
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13 Dated this 27th day of November, 1984.
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16 /s/ _____
17 FRANK E. FENNERTY, JR. Member
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19 DISSENTING OPINION

20
21 It is interesting to note the characterization of the factual evidence, in the foregoing decision
22 of the Board majority. Valiant attempt is made, by emphasizing portions of the claimant's
23 testimony, to cast the evidence in such a light that the facts now constitute "stress and tension
24 present in such a working climate...greater than the day-to-day mental stress common to all
25 occupations and non-employment life", so as to bring this case within the legal holding of Kinville.
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28 This contrasts with the majority's quite different view of the evidence in the Board's prior
29 Decision and Order of November 30, 1981, wherein it was stated that "the only real change in the
30 claimant's work conditions was what he perceived to be a more confining and depressive work
31 environment, which developed following the change of office premises".
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34 It must be noted that, in my dissenting opinion on November 30, 1981, I essentially agreed
35 with the majority's then view of the facts, wherein I stated:
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37 "Were there, in the instant case, any stressful stimuli on the job
38 sufficiently more damaging than the stresses of everyday employment
39 life? Were there situations of greater dimensions than the day-to-day
40 mental stress and tensions which employees may expect to experience
41 in their job? The answer is no. The Board majority finds no such
42 extraordinary stressful stimuli, either, and correctly observes that the
43 only real change in this claimant's long-performed work conditions was
44 'what he perceived to be a more confining and depressive work
45 environment which developed following the change of office premises".
46 (Emphasis mine)
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2 I see no reason to change that view. It was appropriate then. It is appropriate now.

3
4 The effect of the Kinville decision has been to clarify the case law of this state in such a
5 manner that it clearly gives further support to the legal position taken in my prior dissent. The
6 Kinville decision made such clarification by reviewing all prior judicial decisions, and then
7 interpreting and giving meaning and intent to the word "naturally" in the statutory definition applying
8 to compensability of all alleged occupational diseases. Prior judicial decisions had not given
9 meaning to the "naturally" requirement -- nor, I hasten to add, did my prior dissenting opinion in this
10 case clearly do so.

11
12 However, as to compensability of alleged mental occupational diseases, I cited as a "logical
13 answer", Larson's textbook on Workmen's Compensation Law, Vol. 1B, sec. 42.23, for the
14 requirement that mental illnesses, to be compensable, must result from "stressful situations and
15 identifiable mental stimuli of much greater dimensions than the day-to-day stress and tensions of
16 employment life". This is certainly compatible with the "greater risk" principle set forth by Kinville in
17 interpreting the scope of compensability of alleged occupational diseases in general. A strikingly
18 similar reference to the same section of larson's treatise was made by the Kinville court, in a
19 footnote at page 89, wherein the court stated in support of its holding:

20
21 "Our analysis in this regard accords with the generally recognized rule
22 that compensation for a mental disease or injury caused by gradual
23 mental stimuli in the job environment is appropriate only where the
24 evidence establishes that the objective conditions of employment
25 involve significantly more tension than the day-to-day mental stress that
26 all employees experience." (Emphasis added)

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28 In light of all the foregoing, I adhere to my opinion expressed on November 30, 1981, and again
29 dissent from the Board's majority decision.

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31 Dated this 27th day of November, 1984.

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39 /s/
40 PHILLIP T. BORK Member
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